



● **Board of Directors**
Legal and Claims Committee

1/11/2011 Board Meeting

7-4

Subject

Authorize increase of \$200,000 for a total of \$1,050,000 in maximum amount payable under contract with the Resources Law Group to assist in preparation of the Bay Delta Conservation Plan

Description

The Bay Delta Conservation Plan (BDCP) is being prepared through a voluntary collaboration of state, federal, regional, and local water agencies; state and federal fish agencies; and environmental organizations. In 2006, these organizations, including Metropolitan, entered into a Planning Agreement for the BDCP and pursuant to that agreement formed the BDCP Steering Committee to guide the plan's development. Since that time, Metropolitan staff and consultants have been intensively engaged in the BDCP development process.

The basic, underlying purpose of the BDCP is to restore and protect Delta water supply, water quality, and ecosystem health within a stable regulatory environment. The BDCP is being developed in compliance with the federal Endangered Species Act (ESA) and the California Natural Communities Conservation Planning Act (NCCPA). When completed, the BDCP will provide the basis for the issuance of endangered species permits for the operation of the state and federal water projects. The plan would be implemented over the next 50 years. The heart of the BDCP is a long-term conservation strategy that sets forth habitat restoration and water conveyance actions needed to achieve the ecosystem and water supply goals.

Habitat restoration and water supply conveyance options included in the BDCP are being assessed through an Environmental Impact Report (EIR)/Environmental Impact Statement (EIS). Lead agencies for the EIR/EIS are the California Department of Water Resources, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

The Resources Law Group has been an integral consultant assisting Metropolitan in development of the BDCP. In November 2006, Metropolitan's Board authorized the General Counsel to amend an existing agreement with the firm to increase the maximum amount to \$300,000 in anticipation of the intensive BDCP activity that occurred during the fall of 2006 through 2007. In January 2008, the Board authorized an increase of \$350,000 to the agreement to a total of \$650,000. That amount was intended to carry through to the summer of 2009; the date then expected for completion of the draft BDCP. In April 2010, the Board authorized an increase of \$200,000 to the agreement to a total of \$850,000. That amount was intended to carry through to the public release of the draft BDCP and EIR/EIS documents and completion of draft biological assessments. However, the schedule for the completion of the BDCP and EIR/EIS has been delayed from earlier estimates. The current schedule calls for completion of a public draft BDCP by late summer/early fall 2011. These dates are subject to further revision as the BDCP is transitioned to the new State administration.

The Sacramento-based Resources Law Group has high-level legal and policy expertise in natural resources and land use law, including the federal and state ESAs and the California Natural Community Conservation Planning Act. Mr. Christopher Beale from that firm has played a significant role along with Metropolitan staff in the BDCP development process. Mr. Beale has significant prior experience as an attorney representing the California Department of Fish and Game on ESA issues, helped develop the CALFED multispecies conservation strategy and has worked on the development of numerous habitat conservation plans and natural community conservation

plans throughout California. In addition to Mr. Beale, Michael A. Mantell (former Under Secretary of the California Resources Agency), and Michael Valentine (former General Counsel for the California Department of Fish and Game and Chief of the California State Lands Commission's Land Management Division) are available in the firm.

While Legal Department staff with expertise in Delta and SWP water supply, water rights, ESA litigation and CEQA/NEPA issues has been and will continue to be directly involved in the BDCP process, the specialized expertise of the Resources Law Group fills out existing expertise within Metropolitan and provides needed additional resources. In particular, Mr. Beale's specific expertise in development of natural community conservation plans and firsthand knowledge of the regulatory agencies' internal processes has been key not only identifying important legal issues, but in collaborating with agency staff to resolve them.

Because of the important role the firm plays in assisting Metropolitan's staff in the BDCP process, staff recommends that the Board authorize the General Counsel to amend the existing agreement with Resources Law Group to increase the maximum amount payable by \$200,000 to \$1,050,000. The additional amount requested is intended to carry through the next 12 months including public release of the draft BDCP and EIR/EIS documents.

Policy

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta Policy Principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 46843, dated October 10, 2006, the Board authorized execution of the Planning Agreement for the Bay Delta Conservation Plan.

By Minute Item 46878, dated November 14, 2006, the Board authorized execution of the Bay Delta Conservation Plan Cooperative Cost-Share Agreement.

By Minute Item 47135, dated June 12, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

By Minute Item 47232, dated September 11, 2007, the Board adopted criteria for support of conveyance options in implementation of a long-term Delta improvement plan.

By Minute Item 47605, dated August 19, 2008, the Board approved Delta Governance Principles as outlined in the board letter.

By Minute Item 48117, dated December 8, 2009, the Board authorized execution of amendments to the Planning Agreement for the Bay Delta Conservation Plan and the Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay Delta Conservation Plan.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action to increase funding to Resources Law Group is not defined as a project under CEQA because it involves continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Counsel to amend the existing agreement with the Resources Law Group for assistance on state and federal ESA issues, including development of the BDCP, to increase the maximum amount payable by \$200,000 to \$1,050,000.

Fiscal Impact: Up to \$200,000 included in Legal Department budget estimate

Business Analysis: The BDCP will assist in ensuring that Metropolitan's Water Supply from the SWP remains reliable and that a more stable regulatory environment exists for future water operations and projects.

Option #2

Do not authorize the General Counsel to amend the existing agreement with the Resources Law Group.

Fiscal Impact: None

Business Analysis: If the existing agreement with Resources Law Group is not extended, Metropolitan would lose access to specialized legal expertise in state and federal ESA permitting issues while the BDCP is finalized. As a result, the BDCP's ability to achieve the anticipated water supply benefits for Metropolitan could be seriously compromised.

Staff Recommendation

Option #1


Karen L. Tachiki
General Counsel

12/28/2010
Date